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ABC ADVISORY OPINION 2024-003

May 7, 2025

Question: 1. May a malt beverage distributor provide draught-line and coil-cleaning services to any nonquota retail malt beverage licensee free of charge?

 2. May a distributor legally refuse to provide draught-line and coil cleaning services to a nonquota retail malt beverage licensee free of charge after such a demand has been made by such licensee?

 3. May a malt beverage distributor provide draught-line and coil-cleaning services to a nonquota retail malt beverage licensee if the distributor is paid fair market value for such services?

 4. Is a malt beverage distributor required to provide draught-line or coil cleaning services to a nonquota malt beverage package licensee if such licensee will pay the distributor fair market value for such services?

 5. May a malt beverage distributor pay a third party the fair market value for draught-line or coil cleaning services provided to a nonquota retail malt beverage license holder who then provides such services to the license holder free of charge?

Requested by: Hon. Brad Oakley
 on behalf of Kentucky Beer Wholesalers' Association

Syllabus: A malt beverage distributor may provide draught-line and coil cleaning services to nonquota retail malt beverage package licensees free of charge or for a fee, and to nonquota retail malt beverage drink licensees for fair market value, and may refuse any demand by such licensees that they provide such a service.

Statutes construed: KRS 244.590, 27 USC § 205(b)

Legal authority: KRS 241.060

Opinion of the Department of Alcoholic Beverage Control

The Department has received a five-part request for an advisory opinion from the Kentucky Beer Wholesalers' Association (KBWA) regarding whether KRS 244.590 limits or authorizes draught-line or coil-cleaning services to be provided by malt beverage distributors to malt beverage drink retailers. The Department received comments and proposed responses on these questions from the requester, KBWA, as well as Kentucky Eagle, Inc., the Kentucky Restaurant Association (KRA), and the Kentucky Association of Beverage Retailers (KABR).

As background, comments from KABR, KRA and Kentucky Eagle, Inc., emphasize the vital importance of these services to the industry, for “ensuring the quality of malt beverage products and ensuring the safety of those products when they are poured for consumers.” Kentucky Eagle Comments at 1. Without regular cleaning, customers can be exposed to “harmful bacteria, yeast, and mold that can cause illnesses.” KRA Comments at 1. The KRA commented that these services had been provided by distributors for decades. However, according to the KBWA, distributors stopped providing these services and a dispute has arisen between distributors and non-quota malt beverage retailers regarding the circumstances under which a distributor could provide such services.

In summary, the KBWA's questions may be distilled to “are there any circumstances under which a malt beverage distributor can sell or otherwise provide draught-line or coil-cleaning services to a malt beverage retailer, for free or at a cost, and, if so, is the malt beverage distributor required to provide these services?”

KRS 244.590 regulates trade practices between the malt beverage tiers to prevent tied houses. To do so, it broadly prohibits brewers and distributors from “induc[ing] ... any retailer selling malt beverages by the package or drink to purchase malt beverages from that brewer or distributor to the exclusion in whole or in part of malt beverages sold or offered for sale by other persons” through certain enumerated means. KRS 244.590(1). Most relevant to this matter, KRS 244.590(1)(c) precludes distributors from furnishing, selling, or giving equipment and services to

malt beverage retailers.¹ This prohibition would certainly include providing draught-line and coil-cleaning services; however, an exception in KRS 244.590(2)(b) permits malt beverage distributors to “[p]rovide or furnish draught-line cleaning or coil-cleaning service to a nonquota retail malt beverage *package* licensee either directly or indirectly with the consent of the distributor.” KRS 244.590(2)(b) (emphasis added). Notably, the exception does not extend to nonquota retail malt beverage *drink* licensees.

For this reason, KBWA proposes that malt beverage distributors may provide draught-line and coil-cleaning services to nonquota retail malt beverage *package* licensees, but not nonquota retail malt beverage *drink* licensees. KBWA also proposes that distributors cannot provide these services for free, and instead may only provide them if the retail package licensee pays them a fair market rate.

Comments from Kentucky Eagle and KRA offer different interpretations. Both point to KRS 244.590(1) prohibiting the enumerated activities only when done to “induce” retailers to purchase malt beverages from them “to the exclusion in whole or in part” of malt beverage products sold by others. *See* KRS 244.590(1). These commenters argue that to interpret KRS 244.590 to create a blanket prohibition on the enumerated activities would render the legislature’s inclusion of “induce” and “to the exclusion in whole or in part” meaningless. Indeed, “a statute should be construed, if possible, so that no part of it is meaningless and ineffectual.” *Hardin Cty. Fiscal Court v. Hardin Cty. Bd. of Health*, 899 S.W.2d 859, 861-2 (Ky. App. 1995). On the other hand, they argue that the exception in KRS 244.590(2)(b) for nonquota retail malt beverage package retailers was a typographical or scrivener’s error and that the limitation should be disregarded. They propose that malt beverage distributors should be able to provide draught-line

¹ KRS 244.590(1)(c) provides that the malt beverage administrator may promulgate an administrative regulation allowing a brewer or distributor to provide a specific service after some special considerations. Under this authority, the Department promulgated 804 KAR 11:010, which permits brewers and distributors to furnish certain enumerated draft equipment to malt beverage retail licensees but does not permit them to furnish draft-line cleaning services.

and coil-cleaning services to nonquota malt beverage retailers generally, if they pay a fair market rate for these services.

For the reasons discussed below, the Department opines that KRS 244.590 permits, but does not require, the provision of draught-line and coil-cleaning services to nonquota retail malt beverage package licensees either free of charge or for a price, and allows the provision of draught-line and coil-cleaning services to nonquota retail malt beverage drink licensees at for a price that is a fair market rate.

I. KRS 244.590(1) constitutes a prohibition on the enumerated activities only when intended by a brewer or distributor to induce exclusivity from a malt beverage retailer.

The prohibitions under KRS 244.590(1) parallel those in the Federal Alcohol Administration (“FAA”) Act, 27 USC § 205. Indeed, the same language of inducement and exclusion appears in 27 USC § 205(b), and the enumerated activities prohibited in KRS 244.590(1) are nearly identical to the prohibited activities listed in 27 USC § 205(b). Federal regulations interpreting “induce” as used in 27 USC § 205(b) construe it very broadly, stating “the act by an industry member of furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce.” 27 C.F.R. §6.41.

While not binding on the Department’s interpretation of KRS 244.590, these federal laws are instructive as to the legislature’s intent in using the language of inducement and exclusion. KRS 446.080(4) requires that words and phrases be “construed according to the common and approved usage of language” unless they have “acquired a peculiar and appropriate meaning in the law.” If the definition of “induce” promulgated in 27 C.F.R. § 6.41 had been widely understood by industry members, it would not have needed to have been explained in federal regulation. And, although the Kentucky General Assembly used the language of 27 USC § 205(b) in KRS 244.590, neither it nor the Alcoholic Beverage Control Board have adopted the broad definition of “induce” in 27 C.F.R. § 6.41. Under the rules of statutory construction, that decision is presumed to have

been intentional, and the Department therefore interprets KRS 244.590(1) to prohibit the enumerated practices only when the brewer or distributor actually intends to induce the malt beverage retailer “to purchase any malt beverages from that brewer or distributor to the exclusion in whole or in part of malt beverages sold or offered for sale by other persons.”

II. The language of KRS 244.590(2)(b) does not produce an absurd result on its face, and therefore the Department interprets the exception as written to apply only to the provision of draught-line or coil cleaning services by distributors to malt beverage package retailers.

KRS 244.590(2) begins, “Notwithstanding any provisions in KRS Chapters 241 to 244 and this section, a brewer or distributor may...”, and then continues in subsection (2)(b) to authorize providing draught-line and coil-cleaning services to malt beverage *package* retailers. Comments from KRA and Kentucky Eagle, Inc., both label this a drafting error in an omnibus bill amending alcoholic beverage laws, 2013 Ky. Laws Ch. 121 (SB 13), passed in 2013.

Senate Bill 13’s amendments in part divided the previous “malt beverage retail license” into two licenses: a “nonquota malt beverage retail *package* license” and a “nonquota type 4 malt beverage retail *drink* license.” 2013 Ky. Laws Ch. 121 (SB 13) § 51 (emphasis added). This change necessitated amending other statutes in KRS Chapters 241 to 244 to accommodate the bifurcation of the malt beverage retail license. Prior to amendment by SB 13, KRS 244.590 had three instances of the phrase “malt beverage retailer”—in subsections (1), (2)(a), and (2)(b). The bill inclusively amended those instances in (1) and (2)(a) to “retailer selling malt beverages by the package or drink,” while the same phrase in (2)(b)—the draught-line and coil-cleaning exception at issue in this advisory opinion—was exclusively amended to “nonquota retail malt beverage package licensee.” *Id.* at § 97. The legislature could have amended all these instances in the same way, but did not, and instead amended the authorization in KRS 244.590(2)(b) to apply only to nonquota retail malt beverage package licensees.

The Department is not at liberty to interpret the change as a typographical or scrivener’s error merely because it seems that it could be. *City of Somerset v. Bell*, 156 S.W.3d 321, 326 (Ky.

App. 2005) (“Where a statute is amended or re-enacted in different language, it will not be presumed that the difference between the two statutes was due to oversight or inadvertence on the part of the Legislature.”) (quoting *Eversole v. Eversole*, 185 S.W. 487, 489 (Ky. 1916)). Additionally, “where a clause in an old enactment is omitted from the new one, it is to be inferred that the Legislature intended that the omitted clause should no longer be the law.” *Id.* (quoting *Inland Steel Co. v. Hall*, 245 S.W.2d 437 (Ky.1952)).²

However, these commenters also state that permitting these services to be provided to malt beverage package retailers but not malt beverage drink retailers is an “absurd” result, because malt beverage drink retailers much more commonly have need of draught-line and coil-cleaning services than malt beverage package retailers. A statute must not be interpreted to bring about an absurd or unreasonable result. *Williams v. Commonwealth*, 829 S.W.2d 942 (Ky. App. 1992). Additionally, when interpreting a statute “it is appropriate to consider the contemporaneous facts and circumstances which shed intelligible light on the intention of the legislative body.” *City of Somerset*, 156 S.W.3d at 326.

The practical reality is that the only retail malt beverage package licensees that use draught-line and coil-cleaning services are grocery and liquor stores that keep kegs on tap for growlers, or package licensees who also hold malt beverage retail drink licenses. On the other hand, all retail malt beverage drink licensees use these services commonly, whether in-house or through a vendor. However, just because a result may seem impractical does not make it absurd.

Therefore, the Department interprets the plain language of KRS 244.590(2)(b) to apply to only nonquota retail malt beverage package.

² Furthermore, the legislature contemplated removing this language during session earlier this year in 25 RS HB 618. When HB 618 was introduced, it proposed to amend KRS 244.590 to remove subsection (2)(b) entirely. *See* 25 RS BR 1169. However, the version of HB 618 that passed did not include an amendment to KRS 244.590. The Department interprets the decision ultimately not to amend KRS 244.590 to indicate the language is not a typographical error.

III. KRS 244.590 permits, but does not require, malt beverage distributors to provide draught-line and coil-cleaning services to nonquota malt beverage retail drink licensees for a fair market rate.

The next issue to be resolved is whether malt beverage distributors may provide draught-line and coil-cleaning services to nonquota malt beverage retail drink licensees. The Department interprets KRS 244.590(1) to prohibit the provision of these services to nonquota malt beverage drink licensees only when intended by the distributor to induce exclusivity in the retailer.

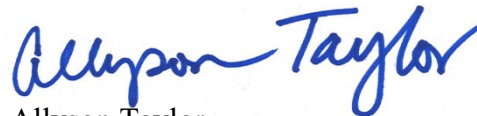
In its comments, Kentucky Eagle, Inc. calls the exception in KRS 244.590(2)(b) “nonsensical.” In fact, whether the use of “induce” in KRS 244.590(1) is meant only to prohibit the enumerated practices when the distributor was actually attempting to induce the retailer to purchase its products to the exclusion of other malt beverage products, as Kentucky Eagle proposes, or it constitutes a blanket prohibition of the enumerated practices, the exception explicitly authorizes distributors to provide draught-line or coil-cleaning services regardless of whether or not it is offered to induce exclusivity in a malt beverage package retailer. Indeed “[n]otwithstanding *any* provisions in KRS Chapter 241 to 244 and this section” means that no state alcoholic beverage law can prevent distributors from providing these services to malt beverage package retailers. KRS 244.590(2)(b) (emphasis added).

However, while KRS 244.590(2)(b)’s blanket authorization to provide these services does not extend beyond malt beverage package retailers, KRS 244.590(1) only prohibits the provision of these services to malt beverage drink retailers when it is intended to induce exclusivity from the retailer. The Department interprets this to mean that the services should not be provided in such a way that the distributor would appear to be trying to induce or entice the retailer to exclusively purchase from them. The best way to ensure that such does not occur is to limit the provision of draught-line and coil cleaning services to retail malt beverage drink licensees to arm’s length transactions, i.e., those sold at a fair market rate.

IV. KRS 244.590(1) does not permit retailers to *require* distributors to provide draught-line or coil cleaning services to them free of charge or for a fair market rate.

The Department interprets KRS 244.590 to prohibit retailers from demanding distributors provide draught-line and coil cleaning services. The exception in KRS 244.590(2)(b) uses permissive language, stating that a “distributor *may* ... [p]rovide or furnish draught-line cleaning or coil-cleaning service ... either directly or indirectly *with the consent of the distributor*.” If the legislature had intended that malt beverage distributors could be required to provide this service to malt beverage package retailers, it would have used mandatory language. To the contrary, KRS 244.590(3) states, “A retailer shall not require or demand that a brewer or distributor violate this section.”

Further, although providing these cleaning services is not a violation under some circumstances, that is only true if the malt beverage distributor consents to providing them. The purpose of KRS 244.590 is to prevent inducement or control by malt beverage licensees of one tier over licensees of another. Nothing in statute permits malt beverage retailers to demand distributors provide this service, whether for free or for a fee.



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